

July 14, 2005

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: James Salsman

Date of Filing: June 29, 2005

Case Number: TFA-0108

This Decision concerns an Appeal that was filed by James Salsman in response to an interim determination issued to him by the Director of the Department of Energy's (DOE) Freedom of Information/Privacy Acts Group (hereinafter referred to as "the Director"). In that determination, the Director denied Mr. Salsman's request for expedited processing of a request for information that he filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy (DOE) in 10 C.F.R. Part 1004. This Appeal, if granted, would require that Mr. Salsman's FOIA request be processed on an expedited basis.

I. Background

The FOIA generally requires that documents held by federal agencies be released to the public on request. In the absence of unusual circumstances, agencies are required to issue a response to FOIA requests within twenty working days of its receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). The FOIA also provides for expedited processing of requests in certain cases. 5 U.S.C. § 552(a)(6)(E).

In his FOIA request, Mr. Salsman sought access to copies of all DOE records pertaining to funds appropriated, budgeted or spent for the purposes of determining the full toxicological profile of uranium and uranium-related substances from 1995 to the present. He further requested that his submission be processed in an expedited manner. In his determination, the Director found that Mr. Salsman's request did not meet the criteria for expedited processing. Mr. Salsman then filed the Appeal at issue here.

II. Analysis

Agencies generally process FOIA requests on a "first in, first out" basis, according to the order in which they are received. Granting one requester expedited processing gives that person a preference over previous requesters, by moving his or her request "up the line" and delaying the processing of other, earlier, requests. Therefore, the FOIA provides that expedited processing is to be provided only when the requester demonstrates "compelling need," or when otherwise determined by the

agency. 5 U.S.C. § 552(a)(6)(E)(i). “Compelling need,” as defined in the FOIA, arises in either of two situations. The first is when failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an urgency to inform the public about an activity of the Federal Government. 5 U.S.C. § 552(a)(6)(E)(v).

Mr. Salsman has not attempted to show that he is primarily engaged in disseminating information and has an urgency to inform the public about an activity of the Federal Government. Therefore, in order to prevail he must show that failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. Mr. Salsman attempts to make this showing by arguing that the toxicological profile of uranium is incomplete (i.e., it lacks information concerning the long-term reproductive and developmental effects of uranium exposure on humans), that this lack of information means that an undetermined number of people are exposed to uranium that is released into the environment by government and industry who would not be exposed if uranium’s full toxicological profile was known, that these people’s lives or physical safety are at risk, and that release of the requested information will “very likely” result in the swift completion of the toxicological profile. Appeal at 4. In support of his position, Mr. Salsman cites a number of studies and scientific publications about the negative effects of uranium on human health.

We do not find Mr. Salsman’s arguments to be convincing. As an initial matter, he assumes that a completed toxicological profile will show that some people are being put at risk by current levels of uranium exposure, and that this exposure will cease shortly after release of the profile. While each of these statements may be true, their validity is by no means assured, and we are not convinced by his claims. More importantly, Mr. Salsman has not explained how release of information about the funding for determining the full toxicological profile will result in the swift completion of that profile. If people are being put at imminent risk because of their exposure to uranium and uranium-related products, it is those substances themselves that are causing the risks, and not any inability to obtain government funding information on an expedited basis.

We are firmly committed to providing expedited processing of FOIA requests where there is a reasonable expectation that failure to do so would jeopardize the life or physical safety of an individual. *Edward A. Slavin, Jr.*, 27 DOE ¶ 80,279 (2000). No such expectation has been shown to exist in this case. We conclude that the Director correctly denied Mr. Salsman’s request for expedited processing of his FOIA request.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by James Salsman in Case No. TFA-0108 is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 14, 2005